

REMARKS

Prior Amendment to the Specification

The Applicant previously presented numerous amendments to the specification. No objection to those amendments has been presented and entry of the same is presumed.

Rejection Under 35 U.S.C. § 112, ¶ 1

The Examiner contends that “[c]laims 20, 21, 26, 27, 35-37, 40, 42, 43, and 45” “fail[] to comply with the written description requirement.” *Final Office Action*, 2. The Applicant addresses each rejected claim in turn.

CLAIM 20

With respect to claim 20, the Examiner contends that “there is no support for the wireless communications with portable devices [to] occur[] over the same network as the communication to receive audio/video.” *Final Office Action*, 3. The Applicant respectfully disagrees. There is nothing in the specification to suggest that the wireless communication must occur over separate networks. The Examiner thus suggests a negative limitation where none exists.

The specification expressly states that “[t]he apparatus 11 initiates and carries out a **communications sessions** via the wireless interface through a **subscribed wireless information service**, such as a cellular telephone connection 13” (emphasis added). The specification further states that “the apparatus 11 is **continuously scanning for other similarly equipped systems . . . and informational devices**” whereby “the apparatus 11 is able to automatically detect other compatible devices and . . . **form a mini local area network**” (emphasis added). “The **wireless communications session 13 could also operate over a subscribed wireless data communications network**” or “could be

provided via a frequency modulations (FM) radio sideband carrier frequency" as well as "a dynamically load balanced and pulsed media distribution network" (emphasis added). The aforementioned wireless session, per the specification, "interfaces to a wireless server" that "can forward requests for and retrieve media content" (emphasis added).

With these ample teachings in mind, the Applicant notes that "there is no *in haec verba* requirement" with respect to written description. MPEP § 2163(I)(B). "[N]ewly added claim limitations" need only "be supported in the specification through express, *implicit, or inherent* disclosure." MPEP 2163(I)(B) (emphasis added). The Applicant believes that the aforementioned references to the specification provide—at the least—implicit and/or inherent disclosure if not express disclosure as to what is claimed. Further, "[t]he examiner has the initial burden of presenting evidence or reasoning to explain why persons skilled in the art *would not* recognize in the original disclosure a description of the invention defined by the claims." MPEP § 2163(II)(A)(3)(b) (citing *In re Wertheim*, 541 F.2d 257, 263 (CCPA 1976)) (emphasis added) (finding that "the PTO has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims.").

In light of these numerous references to communications over a single and/or alternative network in addition to the lack of any suggestion from the Examiner why persons skilled in the art would not recognize the disclosure to support the claims, the Examiner's written description rejection is believed to have been overcome.

CLAIM 21

The Examiner contends that “there is no support for data transmitted over a sideband carrier frequency to ‘accompany’ audio/video content as recited in the claim.” *Final Office Action*, 3. The Applicant respectfully disagrees.

The specification states that a “wireless session 13 could be provided via a frequency modulation (FM) radio sideband carrier frequency that would provide a pervasive secondary channel for data exchange” (emphasis added). In order to be a secondary channel, there must be a primary channel. This pervasive secondary channel would be as such in the context of the aforementioned primary channel; that is, it would accompany the primary channel. This argument is further validated by the specification’s reference to the fact that “[t]he user could also manually select the FM radio sideband carrier frequency as a primary wireless information service.”

In light of this discussion as to communications over a pervasive secondary channel (*i.e.*, a channel that is secondary to a primary channel) and the lack of any suggestion why persons skilled in the art would not recognize the disclosure to support the claims, the Examiner’s written description rejection is believed to have been overcome.

CLAIM 26

The Examiner states that while “the device is disclosed as continuously scanning for devices . . . and connection to the device in response to a user instruction” that the claim as previously presented otherwise lacks written description. *Final Office Action*, 4. The Applicant has amended claim 26 to better conform to the admissions made by the Examiner and claim 26 is therefore believed to exhibit proper written description with respect to a ‘proximity sensor [that] scans for a remote wireless device capable of wireless communication with the portable wireless media access device and connects to the remote wireless device in response to an instruction received via the user interface.’

As this amendment places the claim in better condition for allowance, is made in response to an Examiner suggestion, and would not otherwise require further search in light of the allowability of claim 1, entry of this amendment is respectfully requested.

CLAIM 27

The Examiner contends that claim 27 lacks support with respect to "the wireless communication with portable devices occurring over the same network as the communication to receive audio/video as recited in the claim." *Final Office Action*, 4. Claim 27 exhibits written description for at least the same reasons as set forth with respect to claim 20 and the Examiner's rejection is believed to have been overcome.

CLAIM 35

With respect to claim 35, the Examiner contends that "there is no support for receiving audio/video content from a remote wireless device or wherein the remote wireless device is a[n] 'intermediate' device connected to the content server." *Final Office Action*, 5. The Applicant respectfully disagrees.

The specification states that "[t]he apparatus 11 initiates and carries out a communications session" and "is continuously scanning for other similarly equipped systems within the immediate area . . . and similar informational devices." As a result, "the apparatus 11 is able to automatically detect other compatible devices and . . . form a mini local area network" whereby "[t]he user could then interact with other participating systems." The 'communications sessions' referenced by the specification explicitly include "requests for an retriev[al of] media content." The specification further references—in the context of FIGURE 8—that a provider of information could "operate as a cellular telephone array or similar wireless carrier." A wireless/cellular device may thus operate as a proxy in this regard.

Such an understanding would correspond to the specification's statement that "there is a need for an approach to providing portable wireless access to audio and video media that . . . would preferably include both wireless access and storage means and allow interaction with other non-fixed information sources, such as . . . similar informal informational devices." Further, "[t]he transceiver 69 allows the apparatus 11 to transact a wireless communications session with a remote wireless device." In light of this and the lack of any suggestion why persons skilled in the art would not recognize the disclosure to support the claims, the Examiner's written description rejection is believed to have been overcome.

CLAIM 36

Claim 36 exhibits written description support for at least the same reasons as claim 35 notwithstanding the Examiner's assertion that "there is no support for receiving audio/video content from a remote wireless device." *Final Office Action*, 5. Further, "[t]he transceiver 69 allows the apparatus 11 to transact a wireless communications session with a remote wireless device." The Examiner's rejection is therefore believed to have been overcome.

CLAIM 37

Claim 37 exhibits proper written description for at least the same reasons as claims 35 and 36 notwithstanding the Examiner's assertion that there is no support for receiving audio/video content from a remote wireless device." *Final Office Action*, 5. Further, "[t]he transceiver 69 allows the apparatus 11 to transact a wireless communications session with a remote wireless device"; FIGURE 6 and the related portion of the specification likewise evidence written description support in contrast to the Examiner's contention that "there is no specific support for the 'remote wireless device' to receive audio/video selections from another remote wireless device." *Final Office Action*, 6. The Examiner's rejection is therefore believed to have been overcome.

CLAIM 40

Claim 40 has been cancelled thereby making the Examiner's rejection moot.

CLAIM 42

The Examiner contends that "there is no support for exchanging audio/video content with an external device via a serial cable." *Final Office Action*, 6-7. The Applicant disagrees and references that portion of the specification that states "[s]erial devices can interconnect to the apparatus 11 via a Universal Serial Bus (USB) port 35." A "Universal Serial Bus (USB) port [may] . . . allow the apparatus 11 to dock into a downloading station." Through docking, "information stored in the RAM 63 [may] be retrieved and modified"; this information would be inclusive of audio and video content. The Examiner's rejection is therefore believed to have been overcome.

CLAIM 43

Claim 43 has proper written description for at least the same reasons set forth in claim 42 notwithstanding the Examiner's assertion that "there is no support for exchanging audio/video content with an external device via a docking port." *Final Office Action* 7. The Examiner's written description rejection is therefore believed to have been overcome.

CLAIM 45

The Examiner contends that claim 45 lacks written description in that "there is no support for transmitting the recorded video, or transmitting the video to a remote wireless device, or transmitting any sort of data to a remote wireless device via the wireless network." *Final Office Action*, 7. The Applicant disagrees.

The specification states that "[t]he apparatus 11 initiates and carries out a communications session" and "is continuously scanning for other similarly equipped systems within the immediate area . . . and similar informational devices." As a result,

"the apparatus 11 is able to automatically detect other compatible devices and . . . form a mini local area network" whereby "[t]he user could then interact with other participating systems." The 'communications sessions' referenced by the specification explicitly include "requests for an retriev[al of] media content." The specification further references that a provider of information could "operate as a cellular telephone array or similar wireless carrier." Such an understanding would correspond to the specification's statement that "there is a need for an approach to providing portable wireless access to audio and video media that . . . would preferably include both wireless access and storage means and allow interaction with other non-fixed information sources, such as . . . similar informal informational devices." Further, the specification states that "[t]he transceiver 69 allows the apparatus 11 to transact a wireless communications session with a remote wireless device." As such, the Examiner's rejection is believed to have been overcome.

35 U.S.C. § 103(a) Rejections per Tran and Whiteside

The Examiner previously rejected the independent claims per U.S. patent number 6,202,060 to Tran. The Applicant previously noted that Tran does not disclose a proximity sensor which detects other wireless communication capable devices. Further, the Applicant questioned the applicability of Tran to audio, video, and/or audio and video (collectively referred to as audio/video). The Applicant also challenged the obviousness rejection of the claims per Tran and U.S. patent number 5,835,861 to Whiteside arguing that Whiteside does not disclose a proximity sensor that is capable of detecting other devices that are capable of wireless communication with the presently claimed device.

Notwithstanding, the Examiner maintains a rejection under 35 U.S.C. § 103(a) per Tran and Whiteside contending that the latter reference discloses a proximity sensor. See *Final Office Action*, 2. The Applicant disagrees in that Whiteside states that in its “preferred mode of operation . . . the infrared transceiver *simply broadcasts the telephone number of the vendor continuously.*” Col. 2, l. 13-16 (emphasis added). A blind, continuous broadcast does not suggest—nor would it require—any sort of proximity sensor in that information is transmitted regardless of whether a receiver is within a broadcast range. The system described in Whiteside is no different than a radio broadcast tower that broadcasts blindly regardless of the proximity of any particular radio device. As such, the Applicant again traverses the Examiner’s suggestion that Whiteside discloses a proximity sensor and absent each and every element of the claim being found in the cited art, the rejection is overcome.

CONCLUSION

The Applicant has evidenced proper written description support for each and every claim element.

The Applicant has also evidenced the lack of each and every claim element in the proposed combination of Tran and Whiteside, namely a proximity sensor.

The Applicant has, therefore, overcome all rejections of record and the Examiner is respectfully requested to allow the presently pending claims. If the Examiner has any questions concerning this amendment or the application in general, the Examiner is invited to contact undersigned counsel concerning the same.

Respectfully submitted,
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